HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1119 (S/B) of 2002

Smt. Laxmi Devi

Vs.

General Manager, Kumaon Jal Sansthan
Nainital, Uttaranchal and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 09.5.2005.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.1119 (S/S) OF 2002

Smt. Laxmi Devi, W/o late Shri Balam Singh (Chaukidar Beldar) Resident of Village Syura, P.O. Hairakhan, District Nainital. .....Petitioner.

Versus

1. General Manager, Kumaon Jal Sansthan, Nainital, Uttaranchal.
2. Secretary, Local Bodies, Uttaranchal Government, Dehradun.
3. State of Uttaranchal, through Secretary State of Uttaranchal, Dehradun. .....Respondents.

Sri R.S. Sammal, learned counsel for the petitioner.
Sri J.P. Joshi, learned counsel for the respondents.

Dated: 09-05-2005

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ, order or direction in the nature of mandamus directing the respondents to appoint the petitioner in the department in place of her husband under Government Servant Dying in Harness Rules, 1974 on any post according to her eligibility.

Briefly stated, the husband of the petitioner late Balam Singh was working as Chowkidar Beldar under Kumaon Jal Sansthan since 1st August, 1989. On 16th April, 1991, the services of Sri Balam Singh was transferred to the Kumaon Jal Sansthan respondent no. 1. Late Sri Balam Singh joined as Beldar Chowkidar on 6th May, 1991 under the Kumaon Jal Sansthan and since then he was working regularly in the said department although the department was paying the remuneration according to the daily-wage labourer from 16th April, 1991.

Learned counsel for the petitioner has also referred the *Writ Petition No. 997/S/S of 2001 Madan Mohan Pandey and*

others Vs. State of Uttaranchal and others, where the following interim order was passed in the writ petition:-

"In the meantime the respondents are directed to pay minimum pay scale as is being paid to the similarly situated persons and consider the case of the petitioners for regularization."

However, Balam Singh died on 25th April, 2002 and he was the only male earning member of the family. The petitioner approached to the respondent no. 1 namely General Manager Kumaon Jal Sansthan for the appointment of the petitioner in place of her late husband, who died on 25th April, 2002 under the Government Servant Dying Harness Rules, 1974.

On 23.05.2002, the application of the petitioner was rejected by observing that there is no provision of appointment under the compassionate ground to the daily-wagers.

Again, the petitioner has filed a representation on 9th July, 2002 stating therein that she is entitled to be appointed on the compassionate ground on account of the fact that late Sri Balam Singh has worked for 12 years, 8 months and 24 days and at present the deceased is survived by his wife, his son Pankaj, 12 years, daughter 10 years, son 9 years and 7 years and all are completely unemployed as they are minors. The deceased was only the bread-earner in the family.

A counter affidavit has been filed where Jal Sansthan has stated that in pursuance of the Government Order dated 28th May, 2002, there being no provision for the appointment on the compassionate ground to the daily-wagers, therefore, no appointment can be made. Further in paragraph no. 4 of the counter affidavit, it has been stated by the standing counsel that the engagement of late Balam Singh was neither permanent nor

he was a regularly appointed candidate and it was not also against the regular vacancy.

Sri. J.P. Joshi, learned counsel for the respondents has submitted that in view of the government order, it is not possible to give appointment on compassionate ground.

The question for consideration is limited one with regard to the benefit to be extended to the employee concerned under the Government Servant Dying in Harness Rules, 1974 alone.

Admittedly, the husband of the petitioner has worked for more than 12 years. This fact has not been denied in the counter affidavit. The deceased was appointed on 1st August, 1989 and continued to serve until his death i.e. on 25th April, 2002 and during this period there is no dispute from either side that he continued to work and there was no break in his service.

In ***Writ Petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others,*** similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as under:-

"For the reasons recorded above, since the petitioners' husband was continuing in employment for more than 16 years, petitioner is entitled 5to get benefit of the Uttar Pradesh Recruitment of Departments of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Department of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order."

In ***Anju Misra v. General Manager, Kanpur Jal Sansthan, Kanpur 2004 (1) Page 201*** after relying upon the judgment in ***Santosh Kumar Misra v. State of U.P. and others 2002 (1) UPLBEC, 237,*** it has been held as under:-

"9. According to the submission of the learned Counsel for the State, a daily wager or work charge employee who is engaged by the State Government or any department of the State Government cannot be treated as a Government Servant within the definition of Rule 2 of the aforesaid Rules. Qualifying the above argument, the learned Counsel for the State further submitted that though an employee who is not regularly appointed is covered by the definition in view of sub-clause (iii) of Rule 2(a) but in that case such employee must have put in three years continuous service, that too in regular vacancy in such employment. Since, the petitioner's father was earlier a daily wager or muster roll employee and later on worked as work charge employee, therefore, it cannot be said that he was appointed regularly or had worked in regular vacancy."

"14. The practice of appointing daily wagers or work charge employees is very much prevailing in the State of Uttar Pradesh and instances are no less in number where the daily wager or work charge employees in the Government Department have been allowed to continue for years together, namely, 15 years, 20 years and 25 years or till they actually reach the age of superannuation to which they may not be entitled, not being a Government Servant but, they are disposed with their engagement or attaining the age of superannuation. The practice of appointing such daily wagers and work charge employees has constantly been a matter of great concern for the judiciary and for that matter, the Apex Court has many a times

issued directions for framing schemes so as to accommodate all daily wagers of long standing duration and work-charge employees as a reglar employees. It would be needless to mention that such a scheme has been ordered to be framed by the Court in the department of Rural Engineering Services in the Forest Department and many other department."

In ***Meean Devi Chaudhary v. chief engineer, U.P. Public Works Department, Lucknow (2002) 2 UPLBEC 1421,*** the said controversy has also been decided with the following observations:-

"A woman cannot be denied appointment under this Rule on the alleged ground that her deceased husband was not working on regular basis in view of Meena Devi Chaudhary v. Chief Engineer, U.P. Public Work Department, Lucknow (2002) 2 UPLBEC 1421 at 1422 (All)."

Further in view of the judgment of the Apex Court in the case of ***Pushpa Lata Dixit vs. Madhyamik Shiksha Parishad and others 1991 (18) ALR 509 and Smt. Sushma Gosain and others vs. Union of India and others, AIR 1989 S.C., 1976,*** so far as the appointment on compassionate ground should not be delayed as after the death of bread-earner, the whole family is starving.

Similar view has been taken in the case of ***State of Manipur Vs. Thingujam Brojen (1996) 9 SCC Page 29, further in Smt. Saroj Devi Vs. State of U.P. 1999 (3) Educational and Service Cases Page 215,*** the benefit has also been extended to the temporary employees.

In view of the aforesaid facts and circumstances the writ petition is allowed. The respondents are directed to consider the appointment of the petitioner under Government Servant

Dying in Harness Rules, 1974 within a period of three months from the filing of the certified copy of the order.

The writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

Dated: 09.05.2005

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